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VIA E-MAIL

PRIVILEGED AND CONFIDENTIAL

DATE: 18 March 2023
TO: **XRP HEALTHCARE LIMITED (THE COMPANY)**
FROM: Jacque Law LLC
SUBJECT: Opinion relating to XRPH

1. Background and scope of advice

- 1.1 We refer to the proposed token issuance project (**Issuance**) to be conducted by the Company (and/or its affiliates). We are informed that pursuant to the Issuance, a new digital asset (**XRPH**) will be generated and distributed, which is intended to be utilised on a platform developed and operated by the Company and/or its affiliates. Further details in relation to the background are set out in Annex A.
- 1.2 We have been instructed to provide this advice solely on the questions of whether the design of XRPH would cause it to be considered:
- (a) a "capital markets product" for the purpose of the Securities and Futures Act 2001 of Singapore (the **SFA**);
 - (b) a "digital payment token" under the Payment Services Act 2019 (the **PS Act**); or
 - (c) "e-money" under the PS Act.
- 1.3 For the purpose of this advice, we have been provided with the draft token documentation, which is a non-binding document that sets out, *inter alia*, the proposed design of XRPH to be issued. We are informed that the version of the token documentation which will be finally released will be in substantially the same form as that provided in Annex C. We have relied only on the relevant facts, documents and instructions as informed to us in Annex A and Annex C (and insofar as they are in the English language). We have not considered any other issues, other than that as set out at paragraph 1.2 above, and in particular we will not be aware of the status of any past / future rights or features that may be added to or removed from XRPH, have also not conducted any independent enquiries or due diligence in respect of the Issuance or the operation of the Company (or its affiliates), and we have not had sight of, and express no opinion whatsoever with respect to any other agreements or documents which are mentioned or referred to in any of the documents. This advice is based on Singapore law as at 9.00 am of the date hereof, is limited to the matters expressly specified herein and must not be read as extending, by implication or otherwise, to any other matter.
- 1.4 We have not examined or expressed any views on, nor will we be deemed to have examined or expressed any views on, any regulatory requirements, restrictions or prohibitions (a) under the laws of any other jurisdictions that may be applicable, (b) in connection with the Company's (or its affiliates') activities, the network/ecosystem, or the circumstances or conduct of the Issuance or the commercial aspects of any of the foregoing, or (c) any other ancillary digital asset, platform token, synthetic token, derivative token, wrapped token, staking token, NFT, or asset-backed token such as liquidity provider (LP) tokens, or any fractions thereof, which may be issued/created in connection with the operation of XRP Healthcare. Where any reference or opinion is related to the foregoing or expressed beyond the jurisdiction of Singapore, we

accordingly disclaim reliance thereupon and any obligation arising therefrom, and you are advised to obtain legal advice regarding these issues as applicable. This advice should be read together with the annexes appended hereto, which form an integral part of this advice and will be governed by, and construed in accordance with, Singapore law.

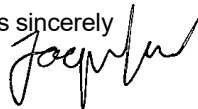
- 1.5 Please also note that our advice does not cover any other areas of law such as tax law, privacy and data protection laws, issues relating to the licensing of information technology, intellectual property, money laundering and countering the financing of terrorism, or regulatory advice (save as mentioned at paragraph 2 below), and we do not assume any responsibility to update this advice after the date hereof.
- 1.6 The views expressed in this advice are solely our views as to the issues expressly dealt with in this advice. Our advice does not constitute an assurance, guarantee or warranty that the Singapore regulatory authorities or Singapore Courts would necessarily agree with the views stated in this advice or that any challenge would not be made or would necessarily fail.
- 1.7 Further, it is assumed that (a) XRPH and XRP Healthcare would meet their description in this advice and in the token documentation, (b) there will be no material variations in XRPH or XRP Healthcare from their descriptions therein which would affect our advice, (c) all services/products offered on XRP Healthcare (which is still in the development stage and the final features are under review) will not be illegal and the necessary approvals and licences will be held by the Company, its relevant operating entities or affiliates in all applicable jurisdictions as necessary (in particular relating to the sale of tokens from any Singapore entity), (d) the Company will conduct all activities in accordance with good corporate governance principles (e) the Company has conducted the Issuance as described herein, and will not be undertaking any business or activities in Singapore which would result in it requiring to be approved, registered or otherwise regulated by the Monetary Authority of Singapore (the **MAS**) under the SFA or the Payment Services Act, or any other competent authority under any applicable law or regulation, and (f) any notifications that have to be provided to the relevant authorities will be undertaken as required.
- 1.8 As of the date hereof, to our knowledge there has been no court case nor any formal notice published by the MAS which directly address the issues raised in this advice, save for various releases, guidelines and papers. Accordingly, the MAS or a court may reach an alternative conclusion different from the one provided in this advice.

2. Advice

- 2.1 A "utility token" is not a defined term under Singapore law. Solely considering the design of XRPH as set out in Annex A and Annex C, we are of the view that, in itself, the design of XRPH:
 - (a) constitutes a digital payment token under the PS Act;
 - (b) does not constitute e-money under the PS Act;
 - (c) does not constitute a "debenture" under the SFA;
 - (d) does not constitute the operation of a "collective investment scheme" under the SFA; and
 - (e) accordingly would not cause XRPH to be deemed a "security" or a "capital markets product" for the purpose of the SFA.
- 2.2 Our detailed analysis is set out in Annex B.

Yours sincerely

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JACQUE LAW LLC

Encl: Annexes A to C

Annex A

Background

1. We understand that the Company is working on developing the "XRP Healthcare" platform (XRP Healthcare), which is described as a decentralized platform for Pharma and Healthcare services built on the XRP blockchain which provides solutions improving the access of inhabitants of "pharmerging" countries to standard healthcare.
2. The platform comprises a decentralised marketplace for pharma and healthcare services, payments/transactions worldwide via mobile and web app, as well as a virtual "Metaverse Clinic" where clients can have anonymous counselling and therapy sessions by choosing an avatar.
3. We are informed that XRPH is designed to have the following functions within the ecosystem:
 - 3.1 XRPH may only be utilised on XRP Healthcare as the medium of exchange for products/services provided in the ecosystem on XRP Healthcare. It is not intended to be a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt; nor is it designed or intended to be used by any person as payment for any goods or services whatsoever that are not exclusively provided by the issuer. For each exchange of services on XRP Healthcare, the costs are to be quantified in XRPH and paid to XRP Healthcare and/or the other party providing the service.
 - 3.2 XRPH would also function as the incentive which would be distributed to encourage users to exert efforts towards contribution and participation in the ecosystem on XRP Healthcare. Further, it is mentioned that additional XRPH will be awarded to a user based only on its actual usage, activity and efforts made on XRP Healthcare (and/or proportionate to the frequency and volume of transactions), so users of XRP Healthcare and/or holders of XRPH who did not actively participate will not receive any XRPH incentives.
 - 3.3 XRPH has the following specific features:
 - (a) XRPH functions as the native platform currency for users of the decentralized marketplace to buy an ever expanding range of pharmaceutical healthcare related products and services, or for payment of fees.
 - (b) Further, as a network effect, users may keep their XRPH in their wallet and utilise it for spending with any third party, merchant or service provider un-related to the platform that is willing to accept these XRPH as the settlement currency for the transaction.
 - (c) To develop a self-sustainable, closed-loop economy, all the fees (network fees, transaction fees, transfer fees, minting fees etc) collected would be re-distributed as incentives for active contributors interacting within the ecosystem.
 - (d) There would be a variety of ecosystem incentives distributed for users which engage with the ecosystem, for example utilising platform for health care products or services, participating in promotions with partners, participating in marketing/airdrop campaigns, or generally interacting with other users.
 - (e) It is the community members which would maintain and drive development of XRP Healthcare, so XRPH incentives would need to be distributed to promote enthusiasm for community governance, increase community activity, and compensate them for their time, expertise and effort. Only users who have participated will be entitled to receive XRPH token governance rewards.
 - (f) To promote decentralised community governance for the network, XRPH would in the future allow holders to propose and vote on governance proposals to determine future features, upgrades and/or parameters of XRP Healthcare, or provide feedback, with voting

weight calculated in proportion to the tokens staked. The right to vote is restricted solely to voting on features of XRP Healthcare; it does not entitle XRPH holders to vote on the operation and management of the Company, its affiliates, or their assets or the disposition of such assets to token holders, or select the board of directors or similar bodies of these entities, or determine the development direction of these entities, nor does XRPH constitute any equity interest in any of these entities or any collective investment scheme; the arrangement is not intended to be any form of joint venture or partnership.

- 3.4 XRPH is not intended to constitute securities in Singapore or any relevant jurisdiction, and will not entitle token holders to any promise of dividends, revenue, fees, profits or investment returns.
- 3.5 XRPH is non-refundable and cannot be exchanged with the Company or any affiliate for cash (or its equivalent value in any other digital asset) or any payment obligation by the Company or any affiliate.
- 3.6 XRPH does not represent any shareholding, ownership, participation, right, title, or interest in the Company or any other company, enterprise or undertaking.
- 3.7 XRPH is not for speculative investment, and (although XRPH may eventually be traded on digital asset exchanges), there is no guarantee or representation of value or liquidity for XRPH.
- 3.8 XRPH is not intended to be a representation of money (including electronic money), payment instrument, security, commodity, bond, debt instrument, unit in a collective investment or managed investment scheme or any other kind of financial instrument or investment.
- 3.9 There does not appear to be any buy-back or destruction mechanism planned for XRPH.
4. XRP Healthcare does not facilitate the transmission of fiat currency on behalf of its users or other third parties, nor does it assist with the conversion of XRPH to fiat currency.
5. The documents indicate that any conversion of XRPH to fiat currency will be done on third party digital asset exchanges. It is mentioned that to the extent a secondary market or exchange for trading XRPH does develop, it would be run and operated wholly independently of the Company (or its affiliates), the distribution of XRPH and XRP Healthcare. The Company will not create such secondary markets nor will it act as an exchange for XRPH.
6. XRPH does not have any tangible or physical manifestation, and does not have any intrinsic value (nor does the Company or any other person make any representation or give any commitment as to its value).
7. The terms and conditions for distribution of XRPH (including any information or document directly or indirectly linked to the token documentation or the project website or social media channels, and which may be incorporated into said terms and conditions for distribution of XRPH) are consistent with and would not include any substantive modifications to the foregoing functionality for either XRPH or XRP Healthcare.
8. We further understand that XRP Healthcare is currently operated outside of Singapore. Prior to the operator extending XRP Healthcare's operations to Singapore, it intends to develop an effective international legal strategy to ensure that XRP Healthcare, its operations and individual product offerings (including any secondary or derivative tokens supported on XRP Healthcare) are in compliance with any Singapore laws or regulations which may be applicable to virtual asset services/exchanges, including without limitation, licensing in relation to the regulated activities under the SFA, in relation to borrowing from and lending to the public under the Finance Companies Act 1967 of Singapore, and/or in relation to digital payment token services under the PS Act, so as to mitigate product level risk.

Annex B

Analysis

1. There is no specific law or regulation in Singapore that provides specifically for regulation of digital assets or digital tokens as such in relation to Singapore securities law. This has been confirmed in a statement (the **August 2017 Statement**) issued on 1 August 2017 ("MAS clarifies regulatory position on the offer of digital tokens in Singapore") by the MAS.
2. However, this cannot be taken to mean that digital assets and digital tokens are wholly unregulated in Singapore. As noted in the August 2017 Statement, digital tokens have evolved beyond just being a digital token, and depending on the features of a particular digital token, they may be subject to re-characterisation under Singapore's laws and consequently be subject to various regulatory regimes in Singapore, in particular under the SFA.

Meaning of "capital markets products" and "securities"

3. The SFA sets out at section 2(1) a definition "capital markets products" as follows:

" "capital markets products" means any securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as the [MAS] may prescribe as capital markets products;"
4. Section 2(1) further defines "securities" as follows:

" "securities" means:
 - (a) *shares, units in a business trust or any instrument conferring or representing a legal or beneficial ownership interest in a corporation, partnership or limited liability partnership;*
 - (b) *debentures; or*
 - (c) *any other product or class of products as may be prescribed,*
but does not include:
 - (i) *any unit of a collective investment scheme;*
 - (ii) *any bill of exchange;*
 - (iii) *any certificate of deposit issued by a bank or finance company, whether situated in Singapore or elsewhere; or*
 - (iv) *such other product or class of products as may be prescribed."*
5. Pursuant to the Securities and Futures (Prescribed Securities) Regulations 2012, various real estate investment trust (REIT) related securities have also been prescribed as "securities" (which do not appear relevant for the purposes of this advice).
6. The definitions of the terms "shares", "debenture", "derivatives contract" and "collective investment scheme", which are referred to in the definitions of "securities", are relevant for the purpose of this analysis. The other categories of instruments / relationships which would be categorised as securities (and hence capital markets products), such as spot foreign exchange contracts, units in a business trust, or interests in partnerships, are not relevant for the purpose of this analysis and XRPH would not constitute any of these.

Meaning of "debenture"

7. Section 2(1) of the SFA provides that:

"debenture" includes:

- (a) *any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a corporation or any other entity, whether constituting a charge or not, on the assets of the issuer;*
- (b) *any debenture stock, bond, note and any other debt securities issued by or proposed to be issued by a trustee-manager of a business trust in its capacity as trustee-manager of the business trust, or a trustee of a real estate investment trust in its capacity as trustee of the real estate investment trust, whether constituting a charge or not, on the assets of the business trust or real estate investment trust; or*
- (c) *such other product or class of products as the Authority may prescribe,*

but does not include:

- (i) *a cheque, letter of credit, order for the payment of money or bill of exchange; or*
- (ii) *for the purposes of the application of this definition to a provision of [the SFA] in respect of which any regulations made thereunder provide that the word "debenture" does not include a prescribed document or a document included in a prescribed class of documents, that document or a document included in that class of documents, as the case may be;"*

8. In addition, it should also be noted that under section 239(3) of the SFA, it is stated that:

"For the purposes of this Division [i.e. Division 1 of Part XIII]:

- (a) *any invitation to a person to deposit money with or to lend money to an entity shall be deemed to be an offer of debentures of the entity; and*
- (b) *any document that is issued or intended or required to be issued by an entity acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the entity in respect of any money that is or may be deposited with or lent to the entity in response to such an invitation shall be deemed to be a debenture."*

9. Debentures have also been judicially defined to mean a document which either creates a debt or acknowledges it and may include any obligation, covenant, undertaking or guarantee to pay, or any acknowledgement thereof. It is key to note, however, that not all company debts qualify as debentures.

Meaning of "derivatives contract"

10. Under the SFA, "derivatives contract" means:

- (a) *any contract or arrangement under which —*
 - (i) *a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and*

- (ii) *the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:*
 - (A) *the value or amount of one or more underlying things;*
 - (B) *fluctuations in the values or amounts of one or more underlying things; or*

(b) *any contract or arrangement that is, or that belongs to a class of contracts or arrangements that is, prescribed to be a derivatives contract...*"

11. The MAS has, in the Frequently Asked Questions on Product Definitions, mentioned at A7 that: "a derivatives contract falls within the ambit of the [SFA] if its reference asset is a security, a unit in a collective investment scheme ("CIS"), a currency or currency index, an interest rate, a commodity and/or the credit of any person (collectively referred to as "underlying thing"). A derivatives contract whose reference asset is not any of the underlying thing will not be considered a derivatives contract under the [SFA], and thus, any person carrying on business in dealing in such derivatives contracts (e.g. weather derivatives) will not be required to hold a capital markets services licence".

Meaning of "collective investment scheme"

12. At present, the term "collective investment scheme" under the SFA means:

12.1 an arrangement in respect of any property:

- (a) under which the participants do not have day-to-day control over the management of the property, whether or not the participants have the right to be consulted or to give directions in respect of such management;
- (b) under which either or both of the following characteristics are present:
 - (i) the property is managed as a whole by or on behalf of a manager;
 - (ii) the contributions of the participants, and the profits or income out of which payments are to be made to the participants, are pooled; and
- (c) under which either or both of the following characteristics are present:
 - (i) the effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise):
 - (A) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or (B) to receive sums paid out of such profits, income, or other payments or returns;
 - (ii) the purpose, purported purpose or purported effect of the arrangement is to enable the participants (whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise): (A) to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management, disposal, exercise, redemption or expiry of, any right, interest, title or benefit in the property or any part of the property; or (B) to receive sums paid out of such profits, income, or other payments or returns,

whether or not: (AA) the arrangement provides for the participants to receive any benefit other than those set out in sub-paragraph 12.1(c)(ii)(A) or 12.1(c)(ii)(B) in the event that the purpose, purported purpose or purported effect is not realised; or (BB) the purpose, purported purpose or purported effect is realised; or

- 12.2 an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as a collective investment scheme by notice published in the Gazette.
- 13.** The following are not considered collective investment schemes under the SFA (each an Excluded Arrangement):
- 13.1 an arrangement operated by a person otherwise than by way of business;
- 13.2 an arrangement under which each of the participants carries on a business other than investment business and enters into the arrangement solely incidental to that other business;
- 13.3 an arrangement under which each of the participants is a related corporation of the manager;
- 13.4 an arrangement made by or on behalf of an entity solely for the benefit of persons, each of whom is:
- (a) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of that entity or, where that entity is a corporation, a related corporation of that entity; or
 - (b) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- 13.5 an arrangement made by or on behalf of 2 or more entities solely for the benefit of persons, each of whom is:
- (a) a bona fide director or equivalent person, a former director or equivalent person, a consultant, an adviser, an employee or a former employee of any of those entities or, where any of those entities is a corporation, a related corporation of the entity which is a corporation; or
 - (b) a spouse, widow or widower, or a child, adopted child or step-child below the age of 18 years, of such director or equivalent person, former director or equivalent person, employee or former employee;
- 13.6 a franchise;
- 13.7 an arrangement under which money received by an advocate and solicitor from his client, whether as a stakeholder or otherwise, acting in his professional capacity in the ordinary course of his practice, or under which money is received by a statutory body as a stakeholder in the carrying out of its statutory functions;
- 13.8 an arrangement made by any co-operative society registered under the Co-operative Societies Act 1979 of Singapore in accordance with the objects thereof solely for the benefit of its members;
- 13.9 an arrangement made for the purposes of any chit fund permitted to operate under the Chit Funds Act 1971 of Singapore;
- 13.10 an arrangement arising out of a life policy within the meaning of the Insurance Act 1969 of Singapore;
- 13.11 a closed-end fund (see below) constituted either as an entity or a trust;
- 13.12 an arrangement under which the whole amount of each participant's contribution is a deposit as defined in section 4B of the Banking Act 1970 of Singapore;
- 13.13 an arrangement of which —

- (a) the predominant purpose is to enable the participants to share in the use or enjoyment of the property or to make its use or enjoyment available gratuitously to others; and
- (b) the property does not consist of any of the following:
 - (i) any currency of any country or territory;
 - (ii) any capital markets products;
 - (iii) any policy as defined in the First Schedule to the Insurance Act 1969 of Singapore;
 - (iv) any deposit as defined in section 4B of the Banking Act 1970 of Singapore;
 - (v) any credit facilities as defined in section 2(1) of the Banking Act 1970 of Singapore;

13.14 an arrangement which is an arrangement, or is of a class or description of arrangements, specified by the Authority as not constituting a collective investment scheme by notice published in the Gazette.

14. A "closed-end fund", as referred to above, means an arrangement referred to in sub-paragraphs 12.1 or 12.2 in the definition of "collective investment scheme" in paragraph 12 above, under which units that are issued are exclusively or primarily non-redeemable at the election of the holders of units.

Analysis

15. At the outset, it is worthwhile to note that it does not appear to us that the design of XRPH, in itself (as described in Annex A), results in any stocks or shares in the Company or its affiliates being issued or subscribed for.

16. Besides the statutory provisions, statements made by the MAS in relation to the definitions of "debentures", "collective investment schemes" and "digital tokens" are instructive.

17. In the August 2017 Statement, the MAS observed that:

"...the function of digital tokens has evolved beyond just being a virtual currency. For example, digital tokens may represent ownership or a security interest over an issuer's assets or property. Such tokens may therefore be considered an offer of shares or units in a collective investment scheme [including under the revised definition of a collective investment scheme proposed in the in the Enhanced Safeguards Consultation Paper] under the SFA. Digital tokens may also represent a debt owed by an issuer and be considered a debenture under the SFA." (emphasis added)

Further, in "A Guide to Digital Token Offerings" (last updated 26 May 2020) (the **Digital Token Guide**), the MAS has stated that offers or issues of digital tokens may be regulated by the MAS if the digital tokens are capital markets products, citing the following as (non-exhaustive) examples of capital markets products that a digital token may constitute:

- (a) a share, where it confers or represents ownership interest in a corporation, represents liability of the token holder in the corporation, and represents mutual covenants with other token holders in the corporation inter se;
- (b) a debenture, where it constitutes or evidences the indebtedness of the issuer of the digital token in respect of any money that is or may be lent to the issuer by a token holder; or
- (c) a unit in a collective investment scheme, where it represents a right or interest in a collective investment scheme, or an option to acquire a right or interest in a CIS.

18. In the "Consultation Paper on Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets" issued by the MAS dated 21 July 2014 (the **Enhanced Safeguards Consultation Paper**), the MAS described debentures as:

*"2.1 Debentures are debt securities regulated under the SFA. Broadly, debentures are **instruments representing indebtedness**. These are **capital-raising instruments**, under*

which the **debenture issuer offers to pay interest in lieu of money borrowed for a certain period**. These may be:

(i) *unsecured – backed by general creditworthiness of the debenture issuer; or*

(ii) *secured – backed by assets, which the debenture holder would have legal claim to if the issuer defaults on its payment obligations under the debenture. Examples include asset-backed securities and collateralised debt obligations." (emphasis added).*

19. In the Enhanced Safeguards Consultation Paper, the MAS contrasted debentures with buy-back arrangements, in particular, of non-financial assets, which are considered normal economic transactions, entered into in the ordinary course of business, examples of which include arrangements allowing consumers to trade-in products after use for a portion of the initial purchase price, or where the purchaser has the right to sell the product back to the seller at the prevailing market price in future.
20. The above was in the context of the (then proposed) regulation of buy-back arrangements involving precious metals (gold, silver and platinum). In its September 2015 response to the Enhanced Safeguards Consultation Paper, the MAS announced that the regulatory regime for debentures under the SFA (and Financial Advisers Act, Cap 110) would extend to arrangements which display the following characteristics as debentures:
- 20.1 Buy-back structure – Party A purchases gold, silver or platinum ("**precious metal**") from Party B for an agreed sum of money or money's worth, with Party B being under an obligation to re-purchase the precious metal back from Party A at a future time; and
- 20.2 Debenture effect – The purpose or effect of the arrangement is to enable Party A to receive a "financial benefit" from Party B. The main risk that Party A is exposed to is the credit risk of Party B, and not fluctuations in market value of the asset.
21. As to the requirement and interpretation of "financial benefit", it was stated in the Enhanced Safeguards Consultation Paper that the "right to receipt of a financial benefit **must be agreed upon at the point in time that the parties enter into the arrangement, although the actual amount received may vary according to pre-determined factors** [including where the pre-determined factors move against Party A such that at the end of the transaction, Party A is in a net financial loss position]" (emphasis added). Examples provided by the MAS of commercial transactions where there would not be deemed to be a financial benefit would include trading contracts, storage contracts, consignment arrangements and sale and lease-back arrangements, whereas there would be a financial benefit where the effective re-purchase price that Party B agreed to pay for buy-back at the time the arrangement is entered into is higher than the initial purchase price that Party A paid for the asset.
22. The SFA refers to section 4(1) of the Companies Act 1967 of Singapore in its definition of "share", namely being "share in the share capital of a corporation and includes stock except where a distinction between stocks and shares is expressed or implied". Typically, a share may be understood as a chose in action that gives its owner, the shareholder, a bundle of rights against the company that issued said share, and one of the most fundamental rights is the right to vote in affairs of the company. It has also been judicially noted that "a share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders inter se in accordance with s 16 of the Companies Act, 1862. The contract contained in the articles of association is one of the original incidents of the share. A share is not a sum of money settled in the way suggested, but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount."
23. In this regard, it is expressly stated that XRPH does not represent any shareholding, participation, right, title, or interest in the Company or any other company, enterprise or undertaking. Once issued, it does not appear that holders of XRPH incur any liability to the Company (or any other company, enterprise or undertaking), nor do they enter into mutual

covenants, or agree to rights and obligations, with other XRPH holders inter se. Consequently, it is unlikely that there would be any dealing in "securities" in the form of stocks or shares arising solely out of the design of XRPH in itself.

- 24.** As to whether XRPH may be considered to be a debenture, XRPH does not appear to be a "debenture" under the SFA for the following reasons:
- 24.1 in order for an instrument to be deemed a debenture some element of indebtedness is required, but this is not present in the material provided for review;
 - 24.2 XRPH is non-refundable and XRPH cannot be exchanged for cash (or its equivalent value in any other digital asset) or any payment obligation by the Company or any affiliate;
 - 24.3 XRPH is not a loan to the Company or any of its affiliates and there is no expectation of profit nor interest payment;
 - 24.4 XRPH is not intended to represent a debt owed by the Company or any of its affiliates (and in this regard there does not appear to be any payment obligation on the part of the issuer, payment of coupon and/or invitation to deposit money with or to lend money to the Company or any of its affiliates);
 - 24.5 XRPH may have no value and there is no guarantee or representation of value or liquidity for XRPH; and
 - 24.6 XRPH may only be utilised on XRP Healthcare as a medium of exchange for valuable services provided in the ecosystem on XRP Healthcare, and provide economic incentives which will encourage users to contribute to and participate in the ecosystem on XRP Healthcare (e.g. XRPH allows users to buy an ever expanding range of pharmaceutical healthcare related products and services, or for payment of fees, or distributed for users which engage with the ecosystem).
- 25.** For completeness, we would mention that XRPH does not appear to constitute a buy-back arrangement (which inherently carries a higher risk of inviting regulation under Singapore securities laws for the reasons described at paragraphs 19 to 21 above) as XRPH is non-refundable.
- 26.** From the token documentation provided to us for review, XRPH does not appear to reference any underlying asset or any underlying thing (but rather it is a useable digital token with certain prescribed functions); accordingly it is also unlikely that XRPH will be construed as a "derivatives contract".

Analysis of the token issuer's activity under the definition of "collective investment scheme"

- 27.** In relation to collective investment schemes, in the Frequently Asked Questions Specific to Collective Investment Schemes issued by the MAS (the **CIS FAQs**) a collective investment scheme is an arrangement where money from investors is pooled together with a view to deriving profits or income from the scheme. The scheme may invest in all kinds of assets, be they financial, real estate, precious metals or commodities. Whether or not exotic schemes (such as commodity investment schemes and schemes which involve digital assets or some other digital token) fall within the scope of that definition depends on the structure of each scheme. Where money invested in the scheme and profits or income from it are pooled, the scheme would be subject to the MAS' approval process. If a commodity is sold directly and separately to individuals, such sales would not be subject to any regulation. Schemes whose objectives are not to generate profit or income but for consumption (e.g. time-sharing schemes and memberships in golf or country clubs) would not fall within the regulatory scope of collective investment schemes under the SFA.

In the Enhanced Safeguards Consultation Paper, the MAS further mentioned that it:

"...has observed a number of arrangements offered to retail investors that fall out of the statutory definition of a CIS [i.e. collective investment scheme], simply by offering investors direct interests in underlying physical assets. This is in spite of an arrangement providing that while investors obtain legal title of the asset, they will cede day-to-day control over management of their property to the scheme operator to be managed collectively with assets of other scheme participants, for the purpose of enabling them to participate in profits of the scheme (collectively-managed investment schemes).

The key distinguishing characteristic of such schemes were that investors' contributions are not initially pooled. Apart from this, such collectively-managed investment schemes do not differ from regulated CIS..."

In this regard, MAS has also announced that the intention is to extend the scope of collective investment schemes to include schemes which are in substance similar to traditional regulated investment funds but do not pool investor's contributions.

28. Under the definition of "collective investment scheme", the "management" limb is an alternative to the "pooling" limb. The two limbs are to be assessed independently of each other, and the absence of the pooling of contributions or profits will not preclude a finding that there is management as a whole. An arrangement would fall outside the scope of regulation if the factual matrix indicates that (a) there is no initial pooling of assets, or (b) there is no expectation of deriving profits or income from the scheme.
29. It should also be noted that the MAS has issued the "Response to Feedback Received – Proposals to Enhance Regulatory Safeguards for Investors in the Capital Markets" dated 22 September 2015 (the **Response to the Enhanced Safeguards Consultation Paper**). This is noteworthy because of its discussion of the meanings of the "management" and "control" limbs found in the definition of "collective investment scheme", which may be summarised as follows:
 - 29.1 in relation to the "management" limb, whether there is management "as a whole" will depend on the investment objectives of the arrangements and the collective or individual nature of the arrangements made in order to produce the intended profits. Indications of whether there is collective management appear to be:
 - (a) whether the scheme operator is likely to look after the essential profit-generating activity under the instructions of, or at least in consultation with, individual owner/investors, or whether it may do so without having regard to individual investors' interests or preferences; and/or
 - (b) whether management on an individual basis is likely to be impracticable – e.g. even where returns are generated from ownership rights to specific property, the returns are generated as a result of the operators' management of activities collectively on the property as a whole;
 - 29.2 in relation to the "control" limb, the MAS is of the view that for investors to be considered as having day-to-day control, they should have direct and on-going power to decide on operational matters relating to management of the scheme property. The greater the extent of reliance on the particular scheme operator's professed expertise in managing the scheme property, the less likely it is that investors have effective day-to-day control. It is also significant that the MAS considers that "if expectations created between the parties in the arrangement are such that investors would not be involved in the day-to-day management of the property, having contractual rights to be consulted on or to give the manager direction from time to time will **not** be considered as effective day-to-day control" (emphasis added); and
 - 29.3 the MAS' intent is to extend capital markets regulatory safeguards to investors in arrangements which are in substance made and managed on a collective basis and hence pose similar risks to investors as traditional collective investment schemes. In particular, the MAS has noted that a number of such schemes previously avoided regulation as a collective investment scheme by offering investors direct legal title to individual assets (i.e. no pooling of investors' contributions); nonetheless in such situations investors' assets are effectively managed

collectively by a third party such that their payoff is the same as the payoff that they would have obtained had their contributions been pooled.

- 30.** From the various pronouncements from the MAS, it appears that the MAS is shifting its focus towards the fundamental purpose of transaction, and this should be analysed in detail. A "utility" token by itself, once issued, with genuine functionality and circulating on its network, would rarely be construed as a "security". In the present case, it does not appear that the design of XRPH, in itself, would be construed as a collective investment scheme.
- 31.** For the following reasons, the management and control limbs of the definition of a collective investment scheme are not fulfilled:

 - 31.1 there are no contributions or funds being "managed" by any party for the purpose of generating returns or other benefits (pooled or otherwise) to be paid to XRPH holders;
 - 31.2 the token documentation states that none of the Company and/or the project contributors shall be responsible for or liable for the value or liquidity of XRPH;
 - 31.3 we understand that there is no promise by the Company or any of its affiliates to pool, manage any asset and/or return any assets to project participants;
 - 31.4 there does not appear to be any economic benefit, beneficial interest or legal title conferred on token holders over any property, and XRPH will not entitle token holders to any promise of dividends, fees, revenue, profits or investment returns;
 - 31.5 the nature of digital tokens is that they are inherently transferable to other parties, and the mere fact (or even any hope) that XRPH may be resold at a price that is potentially higher than the original purchase price does not change the fact that the intention and goal of the token distribution is so that XRPH can be utilised by users. The MAS has also acknowledged in the Digital Token Guide that the ability for a digital token to be traded on the secondary market alone does not result in a digital token being construed as capital markets products under the SFA. In this regard, users are required to acknowledge that they are acquiring XRPH to participate in XRP Healthcare and to obtain services on the ecosystem thereon;
 - 31.6 holders of XRPH have control over how to manage their XRPH held, whether for participation in XRP Healthcare and acquiring various services/products thereon, by selling or trading XRPH in a secondary market, or even simply holding and doing nothing with their XRPH;
 - 31.7 even if XRPH holders are able to obtain additional XRPH, this would not occur through the action or activities of any person or manager, but only through that token holder's participation in the ecosystem on XRP Healthcare;
 - 31.8 given that a XRPH holder is required to perform work each time before being entitled to the XRPH incentives as described in Annex A, it does not appear to us that the XRPH incentives would constitute any dividend, profit or investment return; and
 - 31.9 further, it is mentioned that users of XRP Healthcare and/or holders of XRPH who did not actively participate in XRP Healthcare will not receive any XRPH incentives.
- 32.** Based on our understanding of the token issuer's activities relating solely to XRPH as set out in Annex A, it appears that the element of pooling of contributions and profits, which is a factor affecting whether an arrangement to fall within the definition of a collective investment scheme, is not present for the following reasons:

- 32.1 there is no promise of any profit or return back to any token holder (i.e. XRPH is non-refundable and XRPH cannot be exchanged for cash or any payment obligation); and
- 32.2 notwithstanding the distribution of XRPH, token holders will have no economic or legal right over or beneficial interest in the assets of the Company or any of its affiliates after the token distribution.
33. There is a potential residual risk that pursuant to the powers granted under section 2(1)(h) of the SFA, the MAS may prescribe digital assets / digital tokens to be "securities" for the purpose of the SFA. However, we would mention that as at the date hereof, there is no indication that the MAS intends to exercise its power to make such a declaration. Public statements released by the MAS have indicated that it would avoid taking such a broad-brush approach towards the regulation of digital assets / digital tokens.
34. The key characteristic of a closed-end fund is that units in such a collective investment scheme are not redeemable at the option of the investor. Closed-end funds typically take the form of investments in the shares of an investment company (such that the investor may not realise its investment until the shares have been redeemed) – for such closed-end funds though, because shares of a company are involved, this may trigger prospectus requirements under the SFA's regime in respect of offers of shares or debentures. One further important requirement is that the closed-end fund must be constituted as an entity or trust in order to qualify as an Excluded Arrangement.
35. It is unlikely that the investment arrangement offered (if applicable) may be deemed to be a closed-end fund because in the first place, for the reasons set out above, it is not likely that the design of XRPH, in itself, will be considered the operation of a collective investment scheme.
36. Considering the factors in their entirety, our view is that the design of XRPH (as set out in Annex A), in itself, would not be considered the operation of a collective investment scheme, the management of which, or dealing of interests in which, would trigger an obligation to obtain a CMS licence.

Conclusion as to whether XRPH would constitute a security under the SFA

37. Further, we set out below certain characteristics displayed by financial products which would satisfy the definition of "securities":
- 37.1 the product provides the holder with ownership interest in a legal entity such as a private limited company or an unincorporated body such as a limited liability partnership;
- 37.2 the product provides the holder with a payment of interest;
- 37.3 the product provides the holder with an interest in underlying securities (including equity, shares or debentures);
- 37.4 the product provides the holder with a direct or indirect exposure to underlying profits and/or losses, or assets and/or liabilities;
- 37.5 the issuer (or any related company) has a legal obligation to repay the holder for his purchase of the product or the holder has a legal right to sell the product to the issuer (or any related company), such that the holder may potentially receive a "financial benefit"; or
- 37.6 the product has a feature that allows the holder to convert a product into another token with characteristics set out above or otherwise grants the holder an option to purchase securities.

From the information provided to us, XRPH does not appear to exhibit any of these characteristics described in this paragraph 37.

- 38.** For the various reasons set out above in this Annex B, the design of XRPH would, on balance, not cause XRPH to be deemed a "security" under section 2(1) of the SFA.

Exemptions under the SFA

- 39.** For completeness, we now turn to consider the various exemptions to CMS licensing available under the SFA.
- 40.** While there is a general exemption available to financial institutions (e.g. banks) that are regulated by the MAS, specific exemptions also apply to certain categories of persons carrying on business in regulated activities.
- 41.** Based on our understanding of the design of XRPH (even if the Company or its affiliates were considered to be operating a collective investment scheme) the relevant entities at present would not qualify for any of these exemptions. In the context of the token sale, the Company is unlikely to engage a financial institution to handle said sale and we understand that the Company has no plans to do so. Further, we believe that any such exemptions are not practical in the context of token distributions.
- 42.** Presently, there are no specific exemptions or exclusions under the SFA for activities relating to digital assets or for companies dealing with digital assets (except to the extent that such activities do not fall within the scope of any of the regulated activities). It is unclear if any new exemptions will be introduced, but it is likely that it will be some time before such exemptions would come into effect (if at all).

Meaning of "digital payment token" and "e-money" under the PS Act

- 43.** For the purpose of this advice, the two important definitions under the PS Act are the definition of "digital payment token" and "e-money". These are alternative categories under the PS Act and depending on its exact characteristics, a digital token may fall under either category (but not both).
- 44.** A "digital payment token" is defined as any digital representation of value (other than an excluded digital representation of value) that:
- 44.1 is expressed as a unit;
 - 44.2 is not denominated in any currency, and is not pegged by its issuer to any currency;
 - 44.3 is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt;
 - 44.4 can be transferred, stored or traded electronically; and
 - 44.5 satisfies such other characteristics as the MAS may prescribe.
- 45.** On the other hand, "e-money" is further defined as any electronically stored monetary value that:
- 45.1 is denominated in any currency, or pegged by its issuer to any currency;
 - 45.2 has been paid for in advance to enable the making of payment transactions through the use of a payment account;
 - 45.3 is accepted by a person other than its issuer; and
 - 45.4 represents a claim on its issuer,
- but does not include any deposit accepted in Singapore, from any person in Singapore.

Analysis under the definition of "digital payment token" and "e-money"

46. From the above definitions, we can observe that the key distinction between a digital payment token and e-money is that where the monetary value of the electronically stored amount in fiat currency cannot be determined without referring to some form of market mechanism, for example through the trading of the electronically stored monetary value on an exchange, such electronically stored amount is not e-money but may be a digital payment token.
47. It is critical to note that in the "Consultation paper on proposed regulatory approach for derivatives contracts on payment tokens" issued by the MAS dated 20 November 2019 (the **Token Derivatives Consultation Paper**), the MAS described (at Footnote 1) that there are three main types of digital tokens – securities tokens, payment tokens (in particular, the MAS has affirmed that bitcoin and ether are payment tokens) and utility tokens. Payment tokens do not include utility tokens which are used to access a good or service offered by the token issuer only. Further, in the Digital Token Guide, Case Study 1 mentioned that a token which is accepted only on a native platform and is not or is not intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt, would not be considered to be a payment token under the PS Act.
48. In the Frequently Asked Questions (FAQs) on the Payment Services Act (updated 31 March 2021) (the **PS Act FAQs**), the MAS explained that e-money is a digital representation of currency, so one important distinction between "e-money" and digital payment tokens is the denomination / pegging element. Where the monetary value of the digital token cannot be determined without referring to some form of market mechanism, for example through the trading of the digital token on an exchange, then such digital token would not be viewed as "e-money".
49. XRPH is primarily used as the native token on XRP Healthcare as a medium of exchange for platform interactions.
50. XRPH is not denominated or pegged to any currency, is not paid for in advance to enable the making of payment transactions through the use of any payment account, and does not represent a claim against the issuer. This can be distinguished from the variety of digital "wallet" or "electronic wallet" services in the market which hold pre-paid user funds and may be utilised for general payment purposes, which services MAS intends to regulate under the PS Act as e-money.
51. Based on the foregoing, it does not appear that XRPH would constitute "e-money" as there was no monies paid in advance to any issuer of XRPH, and XRPH does not represent a claim for any value against any entity. It is indicated that XRPH is not intended to be a representation of money or electronic money. There is no inherent "value" or guarantee of the monetary value of XRPH, nor any kind of buyback or repurchase mechanism, so the only way to ascertain the price of XRPH would be the price that third parties would be willing to purchase it for on the secondary market. Further, XRPH is non-refundable and cannot be exchanged for cash (or its equivalent value in any other virtual currency) or any payment obligation by the Company or any affiliate.
52. While it appears that XRPH would satisfy many of the elements for being characterised as a "digital payment token", the critical issue is whether it is a "medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt". The term "section of the public" under the PS Act is a fact-sensitive determination, so a group of individuals with a subsisting relationship with the service provider, or a group of individuals selected because of rational characteristics common to them may not be regarded as a section of the public per se. This determination depends on factors such as size of the group, nature of the service offered, and the significance of the particular characteristic that is common. Generally, a group of individuals selected with a certain degree of indiscriminateness would likely be regarded as a section of the public. The PS Act FAQs has also provided an example where a token is accessible by individuals who do not subscribe to the services of the issuer, and is used by them as payment for goods and services that are not exclusively provided

by the issuer, would be regarded as a medium of exchange accepted by a "section of the public".

- 53.** Notwithstanding that XRPH is "not intended to be a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt" outside XRP Healthcare, we understand that it is freely tradeable on various virtual currency exchanges, and may be exchanged and accessed in a peer-to-peer manner by users. XRPH is not restricted to users of XRP Healthcare, and it does not appear that holders of XRPH may be characterised by any rational characteristics common to them.
- 54.** We also understand that where XRPH is distributed as incentives to various actors interacting within the ecosystem; these are not paid to the issuer, but are instead paid to any user within the ecosystem/network which had participated or contributed. In this regard, services within the ecosystem are not exclusively provided by the issuer only, and any user may participate in the provision of services to the end user. Further, once acquired by any party via a secondary exchange or otherwise, XRPH may be used by the holder in a peer-to-peer manner to pay for any product or service offered by a third party who is unrelated to the issuer (and this is outside the control of the issuer). This is quite distinct from the example raised at Case Study 1 of the Guide to Digital Token Offerings, which indicates that utility tokens are used to access a good or service offered by the token issuer only.
- 55.** In such situation, assuming that the MAS accepts our finding (for the reasons set out at paragraphs 53 and 54 above) that XRPH is indeed a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt, our conclusion would then accordingly be that XRPH constitutes a "digital payment token" under the PS Act.

Other considerations

- 56.** The MAS has indicated that whilst certain digital tokens may not be within the regulatory purview of the MAS, the issuance of such tokens may nonetheless be subject to other legislation regarding anti-money laundering (AML) and counter-terrorism financing (CTF), and in particular the following:

 - 56.1 obligations to report suspicious transactions with the Suspicious Transaction Reporting Office, Commercial Affairs Department of the Singapore Police Force pursuant to the provisions of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 of Singapore; and
 - 56.2 prohibitions from dealing with or providing financial services to designated individuals and entities pursuant to the Terrorism (Suppression of Financing) Act 2002 of Singapore, as well as various regulations giving effect to United Nations Security Council Resolutions.
- 57.** Do note that the aforesaid measures and guidelines are not exhaustive. The Company should refer to other relevant MAS Notices and Guidelines to ensure compliance with AML/CTF measures as appropriate.

Annex C

